

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
CASE NO. 13-60206

JANICE BROWN,
Plaintiff/Appellant

VERSUS

MISSISSIPPI STATE SENATE
Defendant/Appellee

REPLY BRIEF OF APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

WILLIAM H. BARBOUR, United States District Court Judge

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REPLY ARGUMENT I.

DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT COULD NOT PROVE A CLAIM OF RACE DISCRIMINATION?

In its response Appellee takes the same approach as the district court did in its decision by simply avoiding Appellant's arguments. The three criteria Appellee contends it used to support the decision to terminate Appellant were (1) less seniority in her position, (2) least impact on the workplace, and (3) greatest costs saving benefit. The problem with each of these excuses is that each of them were made up during the litigation by Tressa Guynes, and Appellee offers no excuse for her changing her reasoning for her decision.

At first Ms. Guynes claimed Appellant had less seniority for the entire Senate because of some custom that employees assigned to the Lieutenant Governor lost seniority when the Lieutenant Governor changed and the employee was moved to another position. Ms. Guynes admitted the custom did not actually exist, and then claimed seniority was really based on the position and not the entire Senate. At no time has Appellee offered an explanation as to why it lied to the Equal Employment Opportunity Commission ("EEOC") about this false custom, or why it did not claim

seniority was based on class to the EEOC if that was the truth. Any reasonable juror would conclude the only reason Appellee would lie about this would be to cover up its discriminatory animus. However, the district court simply overlooked the evidence or arguments on this topic, and Appellee's brief makes it clear it hopes this Court will take the same approach. The district court also claimed it would not be a genuine issue of material fact because it would not show race discrimination, and only that an employer made an erroneous decision by basing seniority on the position instead of entire employment with the Senate. However, this is simply false. Had Appellee used seniority on the entire Senate, which it initially claimed to the EEOC, only two white employees would be left at the bottom of the seniority list. So Appellee lied to the EEOC to explain why it fired a black employee instead of leaving itself the option of firing one of two white employees. How the district court could not see the evidence of race discrimination is unbelievable.

During the EEOC's investigation Appellee contended one of the reasons Mrs. Brown was selected for lay off was complaints Ms. Guynes had received from Senators and other employees. The EEOC interviewed every person Ms. Guynes identified as making complaints, and every person

admitted to the EEOC investigator that they had made no complaints. Then during discovery some Senators changed their stories to completely unbelievable and contradictory explanations, and some continued to admit the allegations of complaints were not true. The most unbelievable was the testimony of former Senator Flowers, who admitted when he was questioned by the EEOC investigator whether he had any problems with Mrs. Brown that he said no. However, during his deposition he claimed he misunderstood the question to only ask about her personality, and that he would have answered yes if the EEOC investigator had specifically asked about her performance. (R. at p. 319-321). Faced with all these clear contradictories Appellee changes its reasoning with no explanation to it had the least impact on the workplace. Mrs. Brown also disputed each of these allegations regarding poor performance, and all the allegations that she was not really used by her Senators to support the new argument that her selection would have the least impact.

Finally, Appellee contends it selected Mrs. Brown because she had the higher salary compared to Ms. Ramsdale. The problem with this argument is it was never identified by the Senate as one of the criteria to use to select whom to lay off. Nor did Appellee use this as part of its reasoning

to the EEOC for selecting Mrs. Brown for lay off. This is another one of the excuses Ms. Guynes created during her deposition after her first excuses to the EEOC had been shown to be untrue. Appellee again offers no excuse for creating this new reason **twenty-nine (29) months** after Mrs. Brown was selected for lay-off. It is clear Appellee hopes this Court will avoid this issue just like the district court avoided it.

CONCLUSION

It is clear that Appellant proffered evidence to the trial court that proves a case of race discrimination, and the trial court's dismissal of the case at the summary judgment stage should be reversed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Nick Norris, do hereby certify that I have this day by United States mail, postage prepaid, forwarded a true and correct copy of the above and foregoing document to all counsel of record:

THIS, the 25th day of July, 2013.

/s Nick Norris
NICK NORRIS

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CERTIFICATE OF COMPLIANCE

Pursuant to 5th Cir. R. 32.2.7(c), the undersigned certifies this brief complies with the type-volume limitations of 5th Cir. R. 32.2.7(b).

1. Exclusive of the exempted portions in 5th Cir. R. 32.2.7(b)(3), the brief contains:

A. 791 words in proportionally spaced typeface.

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4. The undersigned understands a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5th Cir. R. 32.2.7, may result in the Court's striking the brief and imposing

sanctions against the person signing the brief.

Respectfully submitted,

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